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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,255	04/05/2001	Jeffrey Tze Fei Wong	1441830001336	4343

34879 7590 06/12/2003

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EXAMINER

SCHMIDT, MARY M

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 06/12/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/827,255

Applicant(s)

WONG ET AL.

Examiner

Mary M. Schmidt

Art Unit

1635

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-7 and 9.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Although applicant's amendment to claims 1 and 9 overcomes a portion of the 35 U.S.C. 112, scope of enablement rejection of record for the breath of liposomes claimed, ie. applicant amended to claim liposomes with a molar ratio of PC:Chol:PS or 11:4:0.025, the amendment does not overcome the breath of "therapeutic agents" claimed for administration for treatment purposes. The use of the language "therapeutic" in regards to the administered compounds implies a treatment effect upon administration and thus the enablement rejection states over the breath of claimed drugs or polynucleotides claimed. For the reasons of record (see the Office action mailed 8/6/02) there is a high level of unpredictability in the art for administration of any compound to a whole organism for therapeutic reasons. As such, one of skill in the art would be required to practice an undue amount of experimentation to make and use the breath of claimed therapeutic compounds instantly claimed. The claims as amended thus remain rejection under 35 U.S.C. 112, scope of enablement for the breath of therapeutic compounds claimed, and is only considered enabled for the administration of doxorubicin for treatment purposes for the reasons set forth in the previous Office actions.


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